

Holme Roberts & Owen LLP

August 10, 2000



James P. O'Brien, Esq.
 O'Brien Law Office, P.C.
 401 N. Washington
 P. O. Box 7936
 Missoula, MT 59807

Dear Jim:

This letter memorializes the agreement between W.R. Grace and Millwork West regarding the temporary relocation of Millwork West.

Katheryn Jarvis
 Coggon
 (303) 866-0408
 coggonk@hro.com

Attorneys at Law

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Denver
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Buildings

Grace will arrange for the construction of two buildings at property located on Highway 2 owned by Universal Land Corporation and commonly known as the "Old Stimpson property." The first building will be 50' by 140'. The building shall contain 12 foot posts at 12 foot intervals supporting trusses at least eight foot (8') high.

The second building will be 50' by 100' and will likewise contain 12 foot posts at 12 foot intervals supporting trusses at least eight feet (8') high. The total indoor floor space will be approximately 12,000 square feet. The buildings will both be wooden post frame with steel walls and steel roofs. Both buildings will be constructed with natural light panels along the top two feet of each side wall. Each building will have four doors 3' by 6' 8" and two garage doors 12' by 12', offset from center approximately six feet (6'). The floors will consist of crushed, dust-treated gravel or equivalent. The buildings will include racks, bins and shelves comparable to facilities currently in use by Millwork West for storage.

Landscaping

At the completion of construction of the two buildings, Grace will remove the cyclone fence from its present location between the building site and the highway and install 6' cyclone fencing with two 20 foot gates (one at each fence line) for access to the area between the buildings providing additional outdoor storage to Millwork West. Grace will arrange for removal of the bushes and short trees between the buildings and the highway.

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August 10, 2000

Page 2

Miscellaneous

Grace will clean and move the retail office from the Export Plant to the Old Stimpson property. Grace will also provide a bathroom trailer for the duration of the temporary relocation. Grace will arrange for power and phone service to be run to the retail office and available concurrently with the move of the office. For the duration of the temporary relocation, Grace will provide advertising that identifies the location of Millwork West on Cablevision television (at \$40/month) and by placing 1/4 page advertisements in the Libby newspaper twice each month.

The front edge of the buildings will be parallel with the curb of Highway 2. The Northwest corner of building 1 will be 62 feet from the current North fence line and 35 feet from the current West fence line.

Grace's obligations under this agreement terminate when the removal action at the Export Plant property is deemed complete. Buildings must conform to whatever requirements are deemed necessary by the local governing authorities.

Please indicate Millwork West's assent to the details of this letter by having your client sign below as indicated and return this letter to me. Thank you.

Sincerely,

Katheryn W. Jarvis Coggon

Katheryn Jarvis Coggon

Agreed to by Millwork West

Date: _____

Agreed to by W.R. Grace

W.R. Grace

Date: *Aug 15, 2000*

cc: David M. Cleary

CONSTRUCTION AGREEMENT

This Agreement is by and between W. R. GRACE & CO.-CONN.
(hereinafter "Grace") and The Building Company (hereinafter "Contractor").

RECITALS

Grace is performing certain removal action activities at a former Grace facility located in Libby, Montana known as the Export Plant. The Export Plant formerly belonged to Grace and is now owned by the City of Libby. The removal action activities are being conducted in accordance with a Unilateral Administrative Order dated May 24, 2000 issued by the United States Environmental Protection Agency.

As part of the removal action, Grace is obligated to relocate a tenant from the Export Plant, Millwork West. Grace has agreed to relocate Millwork West into two new buildings to be constructed on property owned by Anthony Berget (the "Site"). Grace solicited bids from qualified vendors for the construction of the two new buildings through its consultant, URS.

Grace desires to engage Contractor to construct the buildings in accordance with the bid submitted by Contractor, dated August 1, 2000. A copy of the Bid is attached hereto as Exhibit A, and incorporated here by reference.

Grace has designated URS (specifically, Lisa Orgera) as its Construction Manager (the "Construction Manager") to act on its behalf in connection with the Work, except as specifically amended herein.

In consideration of the mutual covenants herein contained, Grace and Contractor hereby agree as follows:

1. PERFORMANCE OF WORK

(a) Contractor shall provide all labor, materials and equipment necessary to conduct the Work .

(b) In performing the Work hereunder, Contractor shall: (i) comply with all laws, ordinances, rules, regulations and lawful orders of any public authority; (ii) coordinate its activities with the Construction Manager.

(c) Contractor acknowledges that in connection with its preparation of its bid proposal it has satisfied itself, based on the documents provided during the bid solicitation process, and a site visit, as to: (i) the nature, location and character of the Work to be performed, the surface and subsurface conditions of the Site with respect to the information provided in those documents, and all previously identified structures and obstructions thereon and thereunder; (ii) the nature, location, and character of the general area of the Site, including, without limitation, its climate conditions, available labor supply and labor costs, and available equipment supply and costs; and (iii) the quality and quantity of all materials, supplies, tools, equipment, labor, and other services necessary to complete the construction services in the manner and within the cost and time frame required hereby. The parties agree that in the event of errors in drawings and specification or in the event of changes requested by Grace, a Change Order shall be negotiated and shall be incorporated here by reference.

(d) Contractor shall require that any subcontractors which it may hire to perform any work under this Agreement shall furnish qualified supervisory personnel and other personnel to perform the Work in accordance with the terms set forth in this Agreement, and the conditions set forth in all permit documents, and shall supervise

and direct the Work using Contractor's (or, where relevant, subcontractor's) best skill and attention.

(e) Contractor will work expeditiously to complete the Work in accordance with the schedule set forth in the bid and acknowledges that time is of the essence.

2. **PAYMENT TERMS.** The Contract Price is \$213,600. Grace will pay Contractor as follows:

- (a) \$50,000 within one week of the date this agreement is signed by both parties;
- (b) \$30,000 at the completion of framing on building 1;
- (c) \$25,000 at the completion of metal siding work on building 1;
- (d) \$40,000 within one week of the date the materials are ordered for building 2;
- (e) \$25,000 at the completion of framing on building 2;
- (f) \$25,000 at the completion of metal siding work on building 2;
- (g) When the Work is complete, the Contractor will issue a written request to Grace to conduct an inspection. Within five (5) working days, Grace will conduct the inspection. If any portion of the Work is not acceptable to Grace, a list of items to be completed before Acceptance of the Work will be compiled and provided to the Contractor within five (5) working days after the inspection. Upon satisfactory completion of these items, an Acceptance of the Work will be issued by Grace, and Grace will pay the final amount owed.
- (h) Grace may withhold a payment on account of: (i) defective work not remedied, (ii) claims filed or for which written notice of a claim has been received against Grace based on the Contractor's acts or omissions, (iii) failure of Contractor to make payments properly to subcontractors, or (iv) failure of Contractor to comply

with the requirements of this Agreement (and all attachments); and any permit conditions. When the above grounds are satisfactorily removed, payment shall be made for amounts withheld within five (5) calendar days of Grace's determination that the grounds have been removed.

(i) It is expressly provided that in the event of extraordinary costs involved in performance due to special or additional work and material requirements because of past, present, or future environmental regulations, Grace shall be responsible and shall pay Contractor's cost therefore. All payments for extras or changes requested and approved by Grace shall be paid for within five (5) days after completion and approval of performance by Grace.

3. SAFETY PRECAUTIONS. WASTE

(a) Contractor shall ensure that all of its personnel, as well as any subcontractors or other persons at the Site, have received all safety training required under federal, state and local law and regulations. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable designed to protect and prevent damage, injury or loss to: (i) all employees and all other persons who may be affected thereby, (ii) all other property located on or near the Site, including, without limitation, trees, lawns, shrubs, walks and pavements, and (iii) existing underground and overhead utilities. Contractor shall not unreasonably encumber the construction area with materials or equipment during the performance of the Work and shall promptly remove all waste materials, rubbish, tools and equipment upon completion of the Work.

4. INSURANCE. Contractor shall not begin the performance under this Agreement until: (i) it has obtained all the insurance required by this Agreement; and (ii) it has furnished Grace with copies of applicable insurance certificates. If Contractor neglects or refuses to provide any

insurance required herein, or if any insurance is canceled, Grace may procure such insurance and adjust the Contract Price by the reasonable amount of premiums paid or to be paid.

(a) The insurance provided to Grace shall specify the types and amounts of coverages in effect, the expiration dates of each policy and a statement that no insurance will be canceled or materially changed while Work is in progress without thirty (30) calendar days prior written notice to Grace. Contractor shall make such arrangements as are necessary to ensure that no termination, reduction or expiration of the insurance required herein becomes effective until thirty (30) days after Grace receives such notice.

(b) Contractor shall require its subcontractors to carry and maintain insurance equivalent of that required by Contractor pursuant to this Agreement or shall ensure that each such subcontractor is within the scope of additional insureds under the Contractor's required insurance. Contractor shall have its subcontractors furnish the same evidence of insurance required of Contractor prior to beginning performance of work by each such subcontractor.

(c) Contractor shall take out and maintain, at its expense during the term of this Agreement, the following minimum insurance from insurance companies of recognized responsibility that are satisfactory to Grace and which names Grace as an additional insured and loss payee which contains an endorsement waiving the company's rights to subrogation against Contractor:

COVERAGE

- (1) Worker's Compensation
- (2) Employer's Liability
- (3) Comprehensive General Liability for Bodily Injury and Property Damage

LIMITS

Statutory.
Contractor's normal and Customary.
Contractor's normal and customary, or \$500,000 per occurrence; 1,000,000 general aggregate.

(d) As to claims made against Contractor and its subcontractors the insurance shall be primary irrespective of other applicable insurance and shall not contain any exclusion applicable to the Work or the indemnities contained herein or any other term or condition which could reduce, alter or otherwise detrimentally affect the coverages set forth above.

(e) Contractor shall ensure that any subcontractor used for the off-site transportation, storage, treatment, recycling, disposal or other management of waste associated with the Work maintains adequate comprehensive or commercial general liability and pollution liability insurance which names Grace as additional insured and loss payee. Grace may withhold its acceptance of any such subcontractor if Grace concludes that the insurance, either in amount or scope of coverage, is inadequate, which acceptance will not be unreasonably withheld.

(f) Contractor represents that it has not made any claims under the insurance policies maintained or to be maintained by Contractor as a requirement of this Agreement, and that Contractor is unaware of any occurrence that may give rise to a claim, under such insurance. In the event Contractor becomes aware of any actual or potential claims, or any occurrence which may give rise to a claim under the insurance policies required to be maintained under this Agreement, Contractor will immediately notify Grace. In the event Contractor becomes aware of any such potential or actual claim, Contractor shall obtain additional insurance coverage so that the remaining per occurrence and aggregate coverages equal or exceed the minimum amount of coverage required under the Agreement.

(g) Contractor represents and agrees that it will use its own employees or subcontractors in performing the Work required under this Agreement, and that it will not use independent contractors for performance of any Work unless it obtains coverage for the acts and

omissions of such independent contractors by Contractor under the insurance required to be maintained under this Agreement.

(h) Nothing herein shall be construed as limiting in any way the extent to which Contractor may be held liable for its or its subcontractors' performance of Work covered under this Agreement.

5. PERMITS. Contractor will obtain, prior to starting the Work, all local and state permits and approvals required for performance of the Work. Contractor and its subcontractors shall comply strictly with all laws, ordinances, regulations, codes, rules and lawful orders of any public authority having jurisdiction over any Work performed under this Agreement and the services to be provided by Contractor and its subcontractors, including, without limitation, all federal, state and local environmental laws. All government agency permits required shall be secured by Grace prior to, or contemporaneous with, the date down payment is received by Contractor, and the fees therefore shall be paid by Grace.

6. OTHER PROVISIONS:

(a) In the event any environmental agency deems that materials involved in the excavation or otherwise located on the site may be contaminated, Grace shall be responsible at its own cost for disposal of all such debris or materials.

(b) Grace shall, at its own expense, provide ~~for fire hydrant hook-ups for both~~ *DM2*
~~buildings,~~ temporary toilets at the Site, and temporary electrical power hook-ups on the jobsite. All electrical power needed in the performance of this Agreement shall be paid for by Grace.

7. TERMINATION

(a) Except as otherwise provided below, this Agreement shall terminate upon final payment.

(b) Grace may cancel this Agreement for Contractor default in the following circumstances: (i) if the Work is not performed in accordance with the provisions of this Agreement or permit conditions; provided that at least (7) days prior to cancellation, Contractor shall have received from Grace written notice of the failure to perform the Work properly and Contractor shall not have cured any such default within seven (7) days of receipt of such notice, or, for any default which is not curable within seven (7) days, Contractor shall not have made reasonable progress toward curing such default within seven (7) days, and provided further that Grace's right to cancel shall not be so limited if Contractor's failure to perform the Work properly has caused or is likely to cause a substantial and imminent hazard or potential hazard to the public health or the environment; or (ii) if any proceedings in bankruptcy or insolvency, voluntary or involuntary, are commenced by, or against Contractor, or if any receiver is appointed with or without Contractor consent, or if Contractor makes any assignment for the benefit of creditors, or if Contractor commits any other act of bankruptcy or becomes insolvent or unable to meet its debts as they mature. If Contractor is in default of this Agreement, Grace shall have all rights available to it at law or in equity, including specific performance, to enforce this Agreement.

(c) At any time, Grace may, at its option and with or without cause, terminate this Agreement as long as Grace furnishes Contractor with written notice seven (7) days prior to such termination.

(d) Contractor may terminate this Agreement at any time, in writing, if, through no fault of Contractor: (i) the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or (ii) Grace substantially fails to fulfill its obligations under Section 2 of the Agreement, provided that at least seven (7) days prior to

termination, Grace shall have received from Contractor written notice of its substantial failure to fulfill the obligations under that section and Grace shall not have cured such failure within seven (7) days of receipt of such notice, or, for any default which is not curable within seven (7) days, Grace shall not have made reasonable progress toward curing such default within seven (7) days.

(e) Upon termination, Grace shall only be liable to Contractor for the costs of the Work (as calculated in accordance with Paragraph 6(g) and (h) that are: (i) already performed or incurred as of the date Contractor or Grace receives notice of termination, (ii) performed after receipt of the notice (to the extent such Work is expressly authorized by Grace after that date), and (iii) performed immediately thereafter to address health and/or safety risks, all as approved by Grace. The payments provided for in Paragraph 6(f), (g) and (h) shall be the sole and exclusive remedy of Contractor upon termination of this Agreement. In no event shall Grace be responsible to the Contractor for lost revenues, lost profits, cost of capital, claims of customers or other special, indirect, consequential or punitive damages.

(f) In the event of termination by Grace other than for Contractor default under Paragraph 6(b), payment shall be as follows: the Contractor shall be entitled to payment of costs expended by Contractor in the performance of the work plus ten percent (10%).

(g) In the event of termination for Contractor default under Paragraph 6(b), payment shall be as follows: the contractor shall be entitled to payment of a portion of the contract price, pro rata, on the percentage of completion of the Work (as agreed to by the parties) achieved by Contractor prior to termination, reduced by any costs incurred by Grace as a result of the Contractor's default, including the costs of correcting any defective work.

8. BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit

of each of Grace and Contractor and their respective successors and assigns; provided, however, that Contractor shall not assign this Agreement without the prior written consent of Grace.

9. NOTICE. All notices or requests of consents hereunder shall be in writing and shall be delivered personally or sent by certified or registered mail, postage prepaid, at the addresses set forth below.

GRACE: David Cleary
W. R. Grace & Co.-Conn.
6401 Poplar Avenue, Suite 301
Memphis, Tennessee 38119
Office: (561) 362-2825
Fax: (901) 820-2061

CONSTRUCTION
MANAGER: URS
Attn: Lisa Orgera
317 Mineral Avenue
Libby, Montana 59923
Office: (406) 293-3964
Fax: (406) 293-3749

CONTRACTOR:
Steve Young
The Building Company
1095 Bayview Drive
Polson, Montana
Office: (406) 883-2883
Fax: (406) 270-1512

10. NONEXCLUSIVITY. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of any duties, obligations, rights or remedies otherwise imposed or available by law.

11. WAIVER. No action or failure to act by Grace or Contractor shall constitute a waiver of any right or duty afforded them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

12. SUBCONTRACTORS. It is acknowledged by Grace that in performing the Work, Contractor may rely on and enter into agreements with subcontractors. The terms and conditions of this Agreement, where relevant, shall apply to all subcontractors and the fees of such subcontractors shall be included in the Contract Price. The Contractor shall be responsible for the satisfactory performance of Work by such subcontractors, including, in particular, ensuring that all work performed by subcontractors is performed in a manner consistent with this Agreement, all attachments, and permit conditions.

13. INDEPENDENT CONTRACTOR. It is expressly understood that Contractor is an independent contractor and that neither Contractor nor its employees or subcontractors are servants, agents, employees or representatives of Grace. Grace shall not be held as a party to any subcontract entered into by Contractor to perform the Work required by this Agreement. Contractor shall have sole responsibility for implementing and supervising the Work, including all Work performed by subcontractors and all safety matters.

14. INDEMNITY, HOLD HARMLESS, AND LIMITATION OF LIABILITY. Contractor agrees to indemnify and save and hold harmless Grace and its employees, consultants and agents (collectively referred to as the "Indemnitees"), individually and jointly, from any and all claims, suits, costs, penalties or actions (in equity or at law), including consultants' and attorneys' fees, to the extent they arise from or on account of: (i) Contractor's, and/or any subcontractor's acts or omissions and the acts or omissions of their employees or agents or (ii) Contractor's and/or any subcontractor's failure to comply with this Agreement, including, but not limited to, failure to perform or complete the Work pursuant to the provisions of this Agreement, all attachments, and the permit conditions, to the extent that such failure to comply is not due to negligent acts or omissions of an Indemnatee.

15. TRANSFER. The obligations of Contractor set forth in this Agreement are personal obligations, and Grace, in entering into this Agreement, is relying upon Contractor's expertise and knowledge in performing its obligations. Contractor shall not assign this Agreement, or otherwise transfer its rights or obligations without the prior written approval of Grace.

16. GOVERNING LAW. This Agreement shall be construed, interpreted and enforced under the laws of the State of Montana.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which should be deemed an original, but which together shall constitute one and the same instrument.

18. ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. In the event of any conflict between the terms of this Agreement and the terms of the proposal, the terms of this Agreement shall prevail. The Agreement may not be amended or modified except by a written instrument signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year below written.

W. R. GRACE & CO.-CONN.

The Building Company

By: 

By: _____

Its: SR. ENV. COUNSEL

Its: _____

ATTACHMENT A

The Building Company Bid